

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 321

SENATE BILL 1389

AN ACT

AMENDING SECTIONS 36-551, 36-557 AND 36-2959, ARIZONA REVISED STATUTES;
RELATING TO THE DEVELOPMENTALLY DISABLED.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-551, Arizona Revised Statutes, is amended to read:

36-551. Definitions

In this chapter, unless the context otherwise requires:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

2. "Adult developmental home" means a residential setting in a family home in which the care, physical custody and supervision of the adult client are the responsibility, under a twenty-four hour care model, of the licensee who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three adults with developmental disabilities:

(a) Room and board.

(b) Habilitation.

(c) Appropriate personal care.

(d) Appropriate supervision.

3. "Adult household member" means a person who is at least eighteen years of age and who resides in an adult developmental home, child developmental foster home, secure setting or home and community based service setting for at least thirty days or who resides in the household throughout the year for more than a cumulative total of thirty days.

4. "Advisory council" means the developmental disabilities advisory council.

5. "Arizona training program facility" means a state operated institution for developmentally disabled clients of the department.

6. "Attributable to mental retardation, epilepsy, cerebral palsy or autism" means that there is a causal relationship between the presence of an impairing condition and the developmental disability.

7. "Autism" means a condition characterized by severe disorders in communication and behavior resulting in limited ability to communicate, understand, learn and participate in social relationships.

8. "Case manager" means a person who coordinates the implementation of the individual program plan of goals, objectives and appropriate services for persons with developmental disabilities.

9. "Case management" means coordinating the assistance needed by persons with developmental disabilities and their families in order to ensure that persons with developmental disabilities attain their maximum potential for independence, productivity and integration into the community.

10. "Cerebral palsy" means a permanently disabling condition resulting from damage to the developing brain which may occur before, after or during birth and results in loss or impairment of control over voluntary muscles.

11. "Child developmental foster home" means a residential setting in a family home in which the care, physical custody and supervision of the child

1 are the responsibility, under a twenty-four hour care model, of the licensee
2 who serves as the foster parent of the child in the home setting and who, in
3 that capacity, is not an employee of the division or of a service provider
4 and the home provides the following services for a group of siblings or up to
5 three children with developmental disabilities:

- 6 (a) Room and board.
- 7 (b) Habilitation.
- 8 (c) Appropriate personal care.
- 9 (d) Appropriate supervision.

10 12. "Client" means a person receiving developmental disabilities
11 services from the department.

12 13. "Community residential setting" means a child developmental foster
13 home, an adult developmental home or a secure setting operated or contracted
14 by the department in which persons with developmental disabilities live and
15 are provided with appropriate supervision by the service provider responsible
16 for the operation of the residential setting.

17 14. "Consent" means voluntary informed consent. Consent is voluntary
18 if not given as the result of coercion or undue influence. Consent is
19 informed if the person giving the consent has been informed of and
20 comprehends the nature, purpose, consequences, risks and benefits of the
21 alternatives to the procedure, and has been informed and comprehends that
22 withholding or withdrawal of consent will not prejudice the future provision
23 of care and services to the client. In cases of unusual or hazardous
24 treatment procedures performed pursuant to section 36-561, subsection A,
25 experimental research, organ transplantation and non-therapeutic surgery,
26 consent is informed if, in addition to the foregoing, the person giving the
27 consent has been informed of and comprehends the method to be used in the
28 proposed procedure.

29 15. "Daily habilitation" means habilitation as defined in this section
30 except that the method of payment is for one unit per residential day.

31 16. "Department" means the department of economic security.

32 17. "Developmental disability" means either a strongly demonstrated
33 potential that a child under the age of six years is developmentally disabled
34 or will become developmentally disabled, as determined by a test performed
35 pursuant to section 36-694 or by other appropriate tests, or a severe,
36 chronic disability which:

- 37 (a) Is attributable to mental retardation, cerebral palsy, epilepsy or
38 autism.
- 39 (b) Is manifest before age eighteen.
- 40 (c) Is likely to continue indefinitely.
- 41 (d) Results in substantial functional limitations in three or more of
42 the following areas of major life activity:
 - 43 (i) Self-care.
 - 44 (ii) Receptive and expressive language.
 - 45 (iii) Learning.

1 (iv) Mobility.

2 (v) Self-direction.

3 (vi) Capacity for independent living.

4 (vii) Economic self-sufficiency.

5 (e) Reflects the need for a combination and sequence of individually
6 planned or coordinated special, interdisciplinary or generic care, treatment
7 or other services which are of lifelong or extended duration.

8 18. "Director" means the director of the department of economic
9 security.

10 19. "Division" means the division of developmental disabilities in the
11 department of economic security.

12 20. "Epilepsy" means a neurological condition characterized by abnormal
13 electrical-chemical discharge in the brain. This discharge is manifested in
14 various forms of physical activities called seizures.

15 21. "Group home" means a residential setting for not more than six
16 persons with developmental disabilities that is operated by a service
17 provider under contract with the division and that provides, in a shared
18 living environment, room and board and daily habilitation. Group home does
19 not include an adult developmental home, a child developmental foster home, a
20 secure setting or an intermediate care facility for the mentally retarded.

21 22. "Guardian" means the person who, under court order, is appointed to
22 fulfill the powers and duties prescribed in section 14-5312. Guardian does
23 not include a guardian pursuant to section 14-5312.01.

24 23. "GUARDIANSHIP SERVICES" MEANS SERVICES OFFERED BY A PROVIDER UNDER
25 CONTRACT WITH THE DIVISION OF DEVELOPMENTAL DISABILITIES TO ACT AS A GUARDIAN
26 TO PERSONS WITH DEVELOPMENTAL DISABILITIES WHERE NO OTHER APPROPRIATE
27 GUARDIAN IS AVAILABLE. THE SERVICE PROVIDER SHALL, IN ADDITION TO THE
28 DISCLOSURE REQUIREMENTS OF SECTION 14-5106, NOT PROVIDE OTHER SERVICES TO THE
29 WARD THAT CREATE A CONFLICT OF INTEREST OR JEOPARDIZE IN ANY WAY ITS ABILITY
30 TO REPRESENT THE WARD AS GUARDIAN.

31 ~~23.~~ 24. "Habilitation" means the process by which a person is assisted
32 to acquire and maintain those life skills that enable the person to cope more
33 effectively with the personal and environmental demands and to raise the
34 level of the person's physical, mental and social efficiency.

35 ~~24.~~ 25. "Indigent" means a developmentally disabled person whose
36 estate or parent is unable to bear the full cost of maintaining or providing
37 services for that person in a developmental disabilities program.

38 ~~25.~~ 26. "Individual program plan" means a written statement of
39 services to be provided to a person with developmental disabilities,
40 including habilitation goals and objectives, which is developed following
41 initial placement evaluation and revised after periodic evaluations.

42 ~~26.~~ 27. "Intermediate care facility for the mentally retarded" means a
43 facility that primarily provides health and rehabilitative services to
44 persons with developmental disabilities that are above the service level of
45 room and board or supervisory care services or personal care services as

1 defined in section 36-401 but that are less intensive than skilled nursing
2 services.

3 ~~27.~~ 28. "Large group setting" means a setting which in addition to
4 residential care provides support services such as therapy, recreation and
5 transportation to seven or more developmentally disabled persons who require
6 intensive supervision.

7 ~~28.~~ 29. "Least restrictive alternative" means an available program or
8 facility that fosters independent living, that is the least confining for the
9 client's condition and where service and treatment are provided in the least
10 intrusive manner reasonably and humanely appropriate to the individual's
11 needs.

12 ~~29.~~ 30. "Likely to continue indefinitely" means that the developmental
13 disability has a reasonable likelihood of continuing for a protracted period
14 of time or for life.

15 ~~30.~~ 31. "Manifested before age eighteen" means that the disability
16 must be apparent and have a substantially limiting effect on a person's
17 functioning before age eighteen.

18 ~~31.~~ 32. "Mental retardation" means a condition involving subaverage
19 general intellectual functioning and existing concurrently with deficits in
20 adaptive behavior manifested before age eighteen.

21 ~~32.~~ 33. "Physician" means a person licensed to practice pursuant to
22 title 32, chapter 13 or 17.

23 ~~33.~~ 34. "Placement evaluation" means an interview and evaluation of a
24 developmentally disabled person and a review of the person's prior medical
25 and program histories to determine the appropriate developmental disability
26 programs and services for the person and recommendations for specific program
27 placements for the person.

28 ~~34.~~ 35. "Psychologist" means a person licensed pursuant to title 32,
29 chapter 19.1.

30 ~~35.~~ 36. "Respite services" means services that provide a short-term or
31 long-term interval of rest or relief to the care provider of a
32 developmentally disabled person.

33 ~~36.~~ 37. "Responsible person" means the parent or guardian of a
34 developmentally disabled minor, the guardian of a developmentally disabled
35 adult or a developmentally disabled adult who is a client or an applicant for
36 whom no guardian has been appointed.

37 ~~37.~~ 38. "Secure facility" means a facility that is licensed and
38 monitored by the division, that is designed to provide both residential and
39 program services within the facility and that is operated to prevent clients
40 from leaving because of the danger they may present to themselves and the
41 community.

42 ~~38.~~ 39. "Service provider" means a person or agency that provides
43 services to clients pursuant to a contract, ~~or~~ service agreement OR QUALIFIED
44 VENDOR AGREEMENT with the division.

1 ~~39-~~ 40. "State operated service center" means a state owned or leased
2 facility that is operated by the department and that provides temporary
3 residential care and space for child and adult services which include respite
4 care, crisis intervention and diagnostic evaluation.

5 ~~40-~~ 41. "Subaverage general intellectual functioning" means measured
6 intelligence on standardized psychometric instruments of two or more standard
7 deviations below the mean for the tests used.

8 ~~41-~~ 42. "Substantial functional limitation" means a limitation so
9 severe that extraordinary assistance from other people, programs, services or
10 mechanical devices is required to assist the person in performing appropriate
11 major life activities.

12 ~~42-~~ 43. "Supervision" means the process by which the activities of an
13 individual with developmental disabilities are directed, influenced or
14 monitored.

15 Sec. 2. Section 36-557, Arizona Revised Statutes, is amended to read:

16 36-557. Purchase of community developmental disabilities
17 services; application; contracts; limitation

18 A. The department may use state and federal funds appropriated or
19 otherwise available to it for this purpose to assist in the establishment and
20 maintenance of local developmental disability services by public or private
21 nonprofit or profit agencies. The funds may be expended as professional fees
22 for service, in contracts for advancement or reimbursement or in another
23 appropriate manner and may be used for any purpose necessary to the provision
24 of local developmental disability services. They may not be used for
25 departmental salaries, care of developmentally disabled persons by the
26 department or any other purpose within the department itself, but they may be
27 used for consultation to the department in the interest of local programs.

28 B. A local public or private nonprofit or profit agency providing or
29 intending to provide community developmental disability services and desiring
30 to contract with the department for the furnishing of such services shall
31 submit a program plan and budget to the department on the forms and in the
32 manner required by the department. If the program meets departmental
33 standards and is consistent with the state plan of the department and the
34 individualized service program plan of the client, the department,
35 notwithstanding the provisions of title 41, chapter 23, relating to
36 procurement and including services pursuant to section 36-2943, may contract
37 with that agency for such services as are required and upon such terms and
38 conditions as the department shall require. The contracts shall provide that
39 the provider of services shall be subject to a continuing program evaluation
40 by the department through progress reports, expenditure reports, program
41 audits or other appropriate evaluation techniques and to assure that the
42 provider of service is in continued compliance with the terms of the contract
43 and the department's community developmental disability service standards and
44 requirements.

1 C. Contracts between the department and a school district or districts
2 shall be subject to approval by the department of education.

3 D. This article does not make the department or the state responsible
4 for funding programs beyond the limits of legislative appropriation for the
5 programs. This article does not require a provider of services to provide
6 unreimbursed services to the department or its clients.

7 E. Contracts to provide community developmental disability services
8 shall require that:

9 1. The contractor is obligated to operate a program or service in
10 strict accordance with the standards adopted for such program or service by
11 the department.

12 2. If state funding is provided for a particular program the
13 contractor, to the extent of positions available which are being purchased by
14 the department, shall provide services to a developmentally disabled client
15 who has been evaluated and placed by the department.

16 3. All contractors must carry liability insurance in amounts approved
17 by the risk management section of the department of administration and file
18 proof of such insurance with the risk management section. The director may
19 waive such requirement on a case by case basis upon a finding that insurance
20 for such program or service is not practicably available at affordable rates
21 and that it is necessary that the program or service be provided by the
22 contractor.

23 4. All clients enrolled in programs shall have all the same specified
24 rights as they would have if enrolled in a program operated directly by the
25 state.

26 5. Except for emergency placement pursuant to section 36-560,
27 subsection N, payment shall not be made based on program services provided to
28 a client if a placement evaluation has not been made, and no individual
29 program has been prepared and when, upon such placement evaluation, no
30 recommendation has been made to enroll the client in the particular program
31 service.

32 This article does not require a contracted agency to provide unreimbursed
33 services to the department or a client of the department.

34 F. Contracts for the purchase of residential care services other than
35 those community residential settings licensed pursuant to this chapter shall,
36 in addition to other general requirements applicable to purchase of care
37 contractors:

38 1. Provide for mandatory inspection by the department every two years
39 for facilities other than group homes.

40 2. Provide for mandatory monitoring by the department for health,
41 safety, contractual and programmatic standards at least every six months.

42 3. Provide for mandatory investigation by the department in response
43 to complaints within ten working days, except that in those instances which
44 pose a danger to the client, the department shall conduct the investigation
45 immediately. Health and safety complaints related to group homes shall be

1 referred to the department of health services on receipt. The department of
2 health services shall share all incident reports related to health and safety
3 with the division of developmental disabilities.

4 4. Except for group homes licensed by the department of health
5 services, specify the health and safety and sanitation codes and other codes
6 or standards applicable to the facility or to the operation of the facility
7 by the contractor other than group homes.

8 5. Provide for mandatory periodic reports to be filed by the provider
9 contractor with the department with respect to the operation of the facility.

10 6. Provide that the facility and the books and records of the facility
11 and of the provider are subject to inspection at any time by employees of the
12 department or designees of the department.

13 7. Provide that parents and guardians of developmentally disabled
14 persons residing at the facility, members of the developmental disabilities
15 advisory council, and members of other recognized and ongoing advocacy groups
16 for developmentally disabled persons may inspect the facility at reasonable
17 times.

18 G. Contracts for purchase of residential care services shall require a
19 community residential setting, as defined in section 36-551, to be licensed
20 pursuant to this chapter other than group homes licensed by the department of
21 health services.

22 H. The division shall ensure that all contracted developmental
23 disabilities service providers rendering services pursuant to this chapter
24 are reimbursed in accordance with title XIX of the social security act.

25 ~~I. Any contract issued by the division shall include language~~
26 ~~outlining the provisions for the grievance and appeal procedure.~~ CONTRACTS
27 FOR CLIENT SERVICES ISSUED BY THE DEPARTMENT SHALL INCLUDE LANGUAGE OUTLINING
28 THE PROVISIONS FOR A GRIEVANCE AND APPEAL PROCEDURE. THE DIRECTOR SHALL
29 PROVIDE NOTICE TO PROVIDERS NOT LESS THAN THIRTY DAYS PRIOR TO THE ISSUANCE
30 OF AN AMENDMENT TO A QUALIFIED VENDOR AGREEMENT. BEGINNING SEPTEMBER 1,
31 2006, THE DECISION OF THE DIRECTOR REGARDING QUALIFIED VENDOR AGREEMENT
32 AMENDMENTS MAY BE APPEALED PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. The
33 grievance process applicable to these contracts shall comply with title XIX
34 ~~of the social security act as implemented by department rules and section~~
35 ~~36-563 REQUIREMENTS.~~

36 J. As a condition of contracts with any developmental disabilities
37 service provider, the director shall require terms that conform with state
38 and federal laws, title XIX statutes and regulations and quality
39 standards. The director shall further require contract terms that ensure
40 performance by the provider of the provisions of each contract executed
41 pursuant to this article.

42 K. The division may SHALL establish a rate structure that ensures an
43 equitable funding basis for private nonprofit or for profit agencies for
44 services pursuant to subsection B of this section and section 36-2943. In
45 each fiscal year, the division shall review and may adjust the rate structure

1 based on the provisions of section 36-2959. A RATE BOOK SHALL BE PUBLISHED
2 AND UPDATED BY THE DIVISION TO ANNOUNCE THE RATE STRUCTURE THAT SHALL BE
3 INCORPORATED BY REFERENCE IN CONTRACTS FOR CLIENT SERVICES.

4 L. The division shall disclose to a service provider in the
5 individual program plan defined by section 36-551 any historical and
6 behavioral information necessary for the provider to be able to anticipate
7 the client's future behaviors and needs.

8 Sec. 3. Section 36-2959, Arizona Revised Statutes, is amended to read:
9 36-2959. Reimbursement rates; annual review

10 A. The department shall contract with an independent consulting firm
11 for an annual study of the adequacy and appropriateness of title XIX
12 reimbursement rates to service providers for the developmentally disabled
13 program of both the Arizona long-term care system and the state only program.
14 THE CONSULTANT SHALL ALSO INCLUDE A RECOMMENDATION FOR ANNUAL INFLATIONARY
15 COSTS. The department may require, and the department's contracted providers
16 shall provide, financial data to the department in the format prescribed by
17 the department to assist in the study. A complete study of reimbursement
18 rates shall be completed no less than once every five years.

19 B. The administration shall contract with an independent consulting
20 firm for an annual study of the adequacy and appropriateness of title XIX
21 reimbursement rates to service providers for the elderly and physically
22 disabled program of the Arizona long-term care system. The administration
23 may require, and the administration's contracted providers shall provide,
24 financial data to the administration in the format prescribed by the
25 administration to assist in the study. A complete study of reimbursement
26 rates shall be completed no less than once every five years. IN DETERMINING
27 THE ADEQUACY OF THE RATES IN THE FIVE-YEAR STUDY, THE CONSULTING FIRM SHALL
28 EXAMINE IN DETAIL THE COSTS ASSOCIATED WITH THE DELIVERY OF SERVICES,
29 INCLUDING PROGRAMMATIC, ADMINISTRATIVE AND INDIRECT COSTS IN PROVIDING
30 SERVICES IN RURAL AND URBAN ARIZONA.

31 C. Starting on October 1, 2002, the department and the administration
32 shall provide each of their reports to the joint legislative budget committee
33 and the administration by October 1 of each year.

34 D. The department shall include the results of the study in its yearly
35 capitation rate request to the administration.

36 E. If results of the study are not completely incorporated into the
37 capitation rate, the Arizona health care cost containment system
38 administration shall provide a report to the joint legislative budget
39 committee within thirty days of setting the final capitation rate discussing
40 reasons for differences between the rate and the study.

APPROVED BY THE GOVERNOR MAY 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2005.

Passed the House May 3, 20 05

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 1, 20 05

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmian Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1389

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 10, 2005,

by the following vote: 22 Ayes,

2 Nays, 6 Not Voting

KLM Bennett
President of the Senate
Channing Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

11th day of May, 2005

at 9:50 o'clock a. M.

Jennifer Uparra
Secretary to the Governor

Approved this 20 day of

May, 2005,

at 9:45 o'clock A. M.

Jon Kyl
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2005

at 3:03 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1389